AFR

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A.No. 1213/00 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. JUSTICE L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1213/2000

APPELLANT		Nandal, son of Dular, aged about 48 years, resident of Dharampur, P.S.H. Officer, P.S.H. Pratappur, (Police Chauki Bhatganw) Distt. Surguja. (M.P.)
	VS	
RESPONDENT		State of Madhya Pradesh, through P.S.H. Officer, P.S.H. Pratappur, (Police Chauki Bhatganw) Distt. Surguja. (M.P.)

Present:
Mr. J.K. Shastri, Advocate for the appellant.
Mr. U.N.S. Deo, Additional Public Prosecutor for the respondent-State.

ORAL JUDGMENT
(26th March, 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 10.3.2000 passed by the Additional Sessions Judge, Surajpur, District Sarguja in S.T. No.106/94 whereby learned Additional Sessions Judge after holding the appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to

P.T.O.

(50)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.No...1213/ **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergo R.I. for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that on 4.11.1993 at about 9.00 am accused Nandal was busy in weeding work in his kitchen garden, deceased Mersai came to him in a drunken condition and demanded liquor. On refusal by the accused, Mersai started damaging drain prepared by the accused, when the accused asked him not to damage the drain, Mersai started abusing him. Therefore, the accused went to the parents of deceased and asked them to bring their son to their home, as he is troubling him, but the parents of deceased did not go there. When the accused returned to his kitchen garden, Mersai again started abusing him, which enraged him and in the heat of passion he attacked the deceased with the spade (kodi) on his head as a result of which Mersai fell down and his head was broken. Accused carrying spade (kodi) in his hand reached to the Police Out-Post Bhatgaon and gave the report, based on which first information report (Ex.P-5 & Ex. P-5A) was registered for commission of offence under Section 307 of the IPC and spade (kodi), weapon of offence, was seized from the accused/appellant under Ex.P-1. Receiving this report, the Investigating Officer reached to the spot and took the injured Mersai to District Hospital, Ambikapur. The Investigating Officer under Ex.P-6 requested the doctor to examine the injuries of Mersai, on which Dr. N.K. Pathak (PW-10) examined the injuries, prepared the injury report Ex.P-6A. In the hospital, Mersai

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.No...1243/**सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

succumbed to the injuries, therefore, merg intimation (Ex.P-9) was sent to the Police Station. Dr. Virendra Kumar Shrivastava (PW-7) conducted postmortem examination on the body of deceased, prepared the postmortem report Ex.P-3 in which he opined that cause of death is coma due to brain injury caused by fracture of skull bone. The Investigating Officer prepared the site plan (Ex.P-4) and also prepared the inquest (Ex.P-2) on the body of deceased.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur, who in turn committed the case to learned Sessions Judge, Sarguja from where learned Additional Sessions Judge has received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined eleven witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused as above mentioned.

We have heard Mr. J.K. Shastri, Advocate for the appellant and Mr. U.N.S. Deo, Additional Public Prosecutor for the respondent State.

Mr. Shastri has not disputed the homicidal death of Mersai. Moreover, PW-4 Tiwariram & PW-5 Tilakdhari have stated that accused

(B2)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. No. 1213 सन् 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

came to them and made extra judicial confession that he has committed murder of Mersai. Dr. Virendra Kumar Shrivastava (PW-7) has stated that on 5.11.1993 he conducted postmortem on the body of Mersai, there was one incised wound in the size of 3x ½ inch x bone deep on the forehead 2 inch above the eye, there was a lacerated wound in the size of 4x3 inch x deep bone on the fronto-parietal region, below that the skull bone was fractured, there was an injury on the brain, clotted blood was present, injuries were anti mortem in nature and cause of death was fracture of bone, shock and injuries were sufficient to cause death.

In view of the above, it is established that the death of Mersai was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, there is no direct or ocular evidence in this case, the whole case rests on the circumstantial evidence and the prosecution has tried to establish the crime against the accused based on the following circumstances:-

1. The accused made extrajudicial confession before PW-4 Tiwariram & PW-5 Tilakdhari.
2. The accused went to the parents of deceased and informed them that deceased is troubling him and they should bring him and Somari Bai (PW-1), mother of deceased and Ramsai (PW-2), father of deceased, have stated in their evidence that when they reached

P.T.O.

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....CA/96/2013/ **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to the kitchen garden of accused they saw that their son was lying in injured condition and accused ran away.

Mr. Shastri argued that evidence of PW-4 Tiwariram & PW-5 Tilakdhari is not worth reliance.

PW-4 Tiwariram has stated that on the fateful day he was grazing cattle in his garden, accused came to him and said that he has murdered Mersai. Accused also informed him that he attacked Mersai on his head four times and thereafter accused went towards police outpost Bhatgaon carrying spade (Kodi) in his hand. The spade, which he was carrying in his hand, was stained with blood.

PW-5 Tilakdhari, who is village Kotwar, has also corroborated the above evidence and stated that on the fateful day, on the way Tiwariram met him and informed that one person has committed murder of Mersai, you take him to the police. When he was going on cycle, on the way near Village Dumariya, accused met him carrying spade in his hand. On enquiry by him, the accused informed that he has committed murder of Mersai and he is going to police outpost. On his request, I allowed him to sit on the cycle and he took him to police station. Accused is known to him as he is from his village and his neighbour. Spade was stained with blood.

The defence has not cross examined the above two witnesses at length in order to ascertain the veracity of their evidence. Although these two witnesses are independent witnesses, but there is no reason to disbelieve their evidence and there is nothing on record to show that the

P.T.O.

(34)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....C.A. No. 1213/ **सन् 200** 0

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

extrajudicial confession was not voluntary or true. Their evidence stands corroborated by the fact that Mersai was found in injured condition in the kitchen garden of accused and the accused was absconding from that place.

PW-1 Somari Bai, mother of deceased & PW-2 Ramsai, father of deceased, who were working in their kitchen garden at the time of incident, have categorically stated that the accused came to them and informed that the deceased is creating problem to him, therefore, they should bring him to their house. Thereafter, they went to the house of accused, they saw that their son was lying in injured condition and the accused ran towards Bhatgaon. Therefore, the evidence of above two witnesses and the fact that Mersai was found in injured condition in the kitchen garden of the accused, establishes the fact that extrajudicial confession made by the accused before these two witnesses was true and voluntary. Therefore, the involvement of the accused in the crime in question is established and to this extent we do not find any illegality or infirmity in the judgment of the trial court.

Mr. Shastri argued that case of the prosecution is that the deceased went in a drunken in the kitchen garden of accused where he was working, he demanded liquor, which was not acceded by the accused, on which the deceased started damaging the drain of accused, the accused asked him not to do so. Thereafter, the accused went to the parents of deceased in order to persuade the deceased not to indulge any

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....C.A.No.1213 **सन्** 2000

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

such activities and to bring him to their house, but they did not turn up and when the accused returned to his kitchen garden the deceased again started abusing him and damaging drain, therefore, the accused was left with no alternative being enraged and he attacked the deceased. As such, the accused without having any intention to cause death attacked the deceased and therefore, the offence against the accused does not travel beyond 304 Part II of the IPC.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

The case of the prosecution, as per charge sheet, is that on the fateful day the accused was working in his kitchen garden, deceased came to accused in a drunken condition and demanded liquor, which was not acceded by the accused, therefore, the deceased started abusing and damaging the drain, even the accused went to the parents of deceased in order to persuade him not to indulge in such activities but they did not turn up and in the meantime, the deceased again started abusing the accused and damaging the drain of accused, on which the accused became angry and that forced him to attack the deceased. This act of the accused and the deceased finds support from the fact that even the mother of deceased Somari Bai (PW-1) and father of deceased Ramsai (PW-2) have also stated that in fact accused came to them and apprised them about the act of their son and asked them to bring back their son. Second thing, that the incident happened in the kitchen garden of the

XI-HC-78

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....CrA...No..1213 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused, therefore, the prosecution case, as per ground situation and evidence of Somari Bai & Ramsai shows that in fact deceased went in a drunken condition to the kitchen garden of the accused, where he was working, started quarrelling with the accused and in that process the accused assaulted the deceased with the spade on his head as a result of which deceased fell down, his skull bone was fractured, he was taken to the hospital where he succumbed to the injuries on the next day. Therefore, in view of the above circumstances, we are of the considered opinion that the offence against the accused does not travel beyond Section 304-I of the IPC, as such the finding of the trial court convicting and sentencing the accused under Section 302 of the IPC cannot be sustained.

In the result, the appeal partly succeeds, conviction and sentence imposed upon the accused under Section 302 of the IPC are hereby set aside instead thereof the accused/appellant is convicted under Section 304-I of the IPC and sentenced to undergo R.I. for 10 years. During trial, the accused/appellant was in detention from 5.11.1993 to 5.2.1994, as per judgment, and thereafter, he is in detention continuously from the date of judgment i.e. 10.3.2000 till today, therefore, he shall be entitled for set-off of the above period against the sentence imposed on him.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

proclaim

P.T.O.